

HIGH COURT OF ANDHRA PRADESH

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CIVIL REVISION PETITION Nos.1637 & 1638 OF 2023

Between:

K. Krishnamurthy ChettyPetitioner.

AND

K. Sriramulu Chetty and another
.....Respondents

DATE OF JUDGMENT PRONOUNCED:18.07.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. *Whether Reporters of Local newspapers
may be allowed to see the Judgments?* Yes/No
2. *Whether the copies of judgment may be
marked to Law Reporters/Journals* Yes/No
3. *Whether Your Lordships wish to see the
fair copy of the Judgment?* Yes/No

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+ CIVIL REVISION PETITION Nos.1637 & 1638 OF 2023

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Between:

K. Krishnamurthy ChettyPetitioner.

And

\$ K. Sriramulu Chetty and another

.....Respondents

! Counsel for the Petitioner: Sri T.P. Phani Kumar

^ Counsel for the respondents : Nil

< Gist :

> Head Note:

? Cases Referred:

1.AIR 2022 SC 4256

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION Nos.1637 & 1638 OF 2023

COMMON JUDGMENT:

1. Heard Sri T.P. Phani Kumar, learned counsel for the revision petitioner.
2. The Civil Revision Petition No.1637 of 2023 has been filed under Article 227 of the Constitution of India challenging the order dated 16.03.2023, passed in I.A.No.1175 of 2022 in O.S.No.547 of 2020, on the file of the I Additional Junior Civil Judge, Chittoor.
3. The Civil Revision Petition No.1638 of 2023 has been filed under Article 227 of the Constitution of India challenging the order dated 16.03.2023, passed in I.A.No.1176 of 2022 in O.S.No.547 of 2020, on the file of the I Additional Junior Civil Judge, Chittoor.
4. Both the civil revision petitions are being disposed of by this common judgment.
5. The petitioner in both the revisions is the defendant No.3 in the suit and the respondent No.1 is the plaintiff whereas the respondents 2 and 3 are the defendants 1 and 2 respectively in the suit. The plaintiff respondent filed the suit for partition and

for separate possession with respect to the suit schedule property.

6. The 3rd defendant filed the written statement.

7. The plaintiff respondent No.1 filed I.A.No.1175 of 2022 under Order VI Rule 17 C.P.C for amendment in the plaint, amendment to North boundary as “vanka” by deleting the word “forest” as also the Southern boundary as the “cart track in Yanamalagunta” by deleting the word “vanka” in the plaint schedule.

8. The 3rd respondent defendant/ petitioner filed objection/counter requesting to dismiss the I.A. He submitted inter alia that the plaintiff and the defendants had divided orally in the year 1988 with regard to the land in Sy.No.576/1 to an extent of Ac.4.96 cents with the suit schedule mentioned property and in the said partition Ac.1.18 cents was allotted to each of them. The 3rd defendant sold his share to the 2nd respondent/2nd defendant and the plaintiff also sold his share to the 2nd respondent/2nd defendant and the possession was also delivered to the 2nd defendant. It was further submitted that in the written statement a plea was taken that the description of the suit schedule property was in correct and the

suit schedule property was not a joint family property. The proposed amendment will change the nature and the character of the suit and by amendment, the plaint schedule property shall be shifted into the property of the said defendant No.3.

9. The learned I Additional Junior Civil Judge, Chittoor allowed the application by order dated 16.03.2023.

10. The learned I Additional Junior Civil Judge, Chittoor, held that the pleadings in the counter of the defendants raised rival issues and whether the 3rd defendant is having absolute right over the petition schedule property shall be decided only after the evidence and it cannot be decided at this stage. The court cannot go into the merits of the case of the parties at this stage. The counter averments are the defence taken in the main suit but there is no denial with regard to the wrong mentioning of the boundaries by the plaintiff. It further held that by amendment of the plaint schedule, it will not cause any prejudice and will not change neither the cause of action nor the nature of the suit and the same would avoid the further multiplicity of the proceedings.

11. Learned counsel for the petitioner advanced the same submissions as were advanced before the trial court that the

plaint schedule property is not the joint property, the partition had already taken place and the plaintiff has no cause of action to get the partition.

12. I have considered the submissions advanced and perused the material on record.

13. The submissions as advanced relate to the merit of the suit. It cannot be considered at this stage. The learned trial court was right in observing that the plea raised by the defendant can be decided only after adducing the evidence in trial. The nature of the suit is not changed by such amendment as it still remain the suit for partition. The change in the Northern and Southern boundaries, even if it results in inclusion of such property, which according to the petitioner/defendant is not liable to be partitioned not being the joint property, such a question cannot be gone into at this stage. If such property is not to be partitioned, is a matter to be considered at the stage of trial.

14. The petitioner himself in para No.11 of the counter raised the plea that the description of the suit schedule property as given by the plaintiff was incorrect.

15. Consequently, the application was filed for amendment in the plaint with respect to the North and South boundary of the plaint schedule property to correct the same which application has been allowed.

16. The order of the learned trial court also avoids further multiplicity of the proceedings inasmuch as if the suit proceeds on the description of the plaint schedule property by the boundaries towards North and South, unamended, it may lead to future multiple proceedings. In the trial court, it shall always be open for the defendants to prove that the plaint schedule property as amended by the boundaries under the order of amendment is not liable for partition for the pleadings and the grounds raised in the written statement.

17. Learned counsel for the petitioner placed reliance in **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another**¹, to contend that when the prayer for amendment is *malafide* or by the amendment the other side loses a valid defence, the prayer for amendment is generally not to be allowed.

¹ AIR 2022 SC 4256

18. In **Life Insurance Corporation of India** (supra), the Apex Court held as under in para 70 by summing up the final conclusions.

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See [Vijay Gupta v. Gagninder Kr. Gandhi & Ors.](#), 2022 SCC OnLine Del 1897)”

19. Learned counsel for the petitioner placed emphasis on point No.(iv),(iii) and (iv). It has been held by the Hon'ble Apex Court that the prayer for amendment is generally required to be allowed unless the prayer for amendment is malafide or by the amendment, the other side loses a valid defence.

20. I find that there is no plea of malafide taken to disallow the amendment before the trial court.

21. So far as the other side losing valid defence is concerned, the defence of the petitioner in the written statement is that the plaint schedule property is not liable to be partitioned as his case is that the partition had already taken place and the property does not belong to the plaintiff. The same defence is still available to the petitioner in the suit with respect to the plaint schedule property even after amendment. So, there is no question of the petitioner losing a valid defence.

22. Both the civil revision petitions have no merit and are accordingly dismissed. No order as to costs.

Consequently, the miscellaneous petitions, if any, pending in the petition shall stand closed.

RAVI NATH TILHARI, J

Date:18.07.2023

Note:

L.R copy to be marked.

B/o.

Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION Nos.1637 & 1638 OF 2023

Date: 18.07.2023

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